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IN THE

Supreme Court

OF THE

United States

OCTOBER TERM, 1930

NORTHPORT POWER AND LIGHT COMPANY, a corporation,
Appellant,
vs.
ROLAND H. HARTLEY, as Governor of the State of Washington, and JOHN H. DUNBAR, as Attorney General of the State of Washington,
Appellees.

No. 66

Appeal from the District Court of the United States for the Western District of Washington

BRIEF OF APPELLANT

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and
O. C. MOORE,
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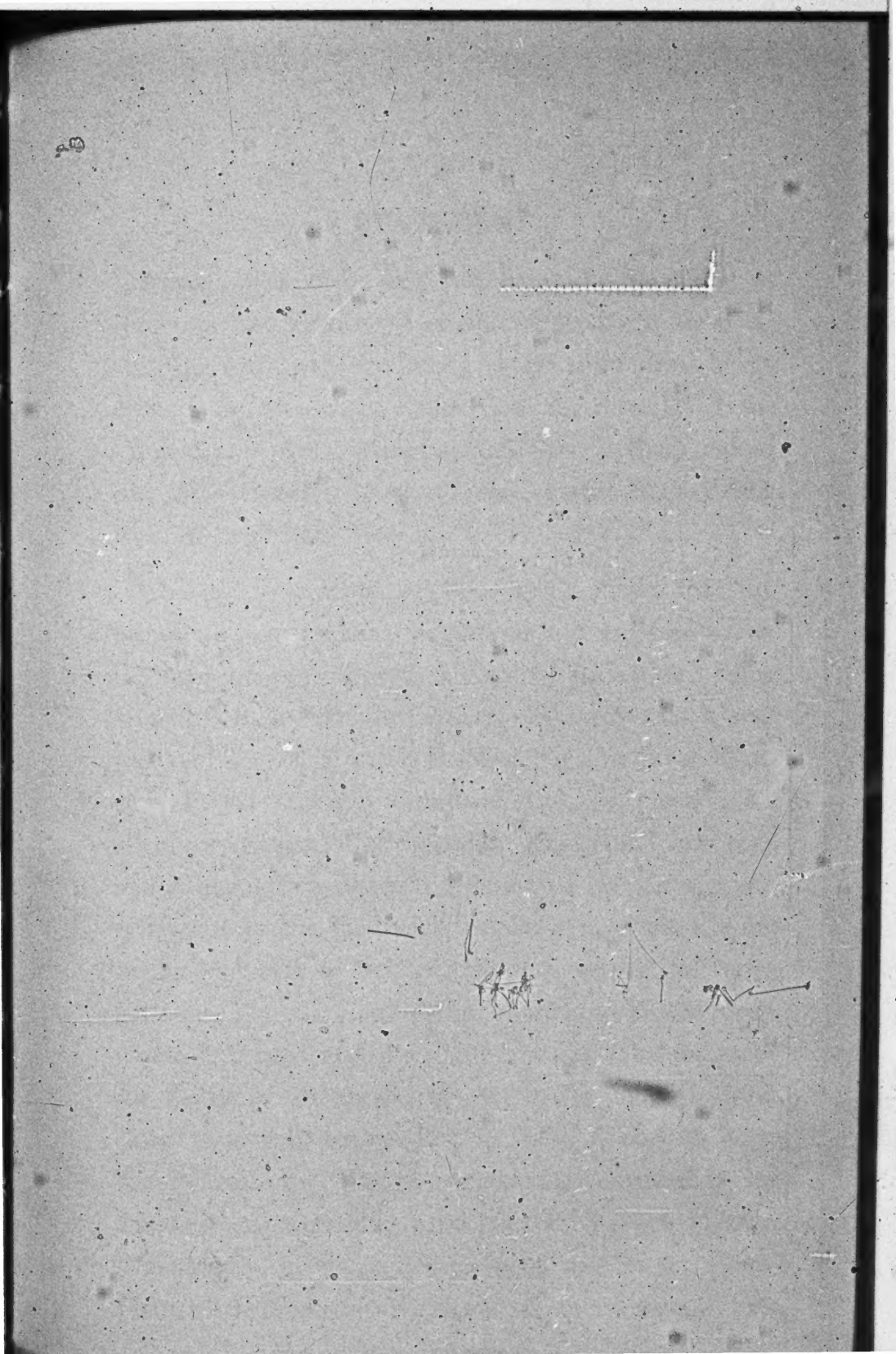

STATEMENT

Appellant seeks by this suit to enjoin appellees, as Governor and Attorney-General, respectively, from instituting escheat proceedings for the forfeiture of its property to the state, under Sec. 33, Art. II of the Constitution of Washington and Sec. I, Chap. 50 of the 1921 Session Laws of that state; Sec. 10582, Rem. Comp. Stat., Vol. 3.

The bill of complaint (Rec. p. 1) shows that appellant is a corporation organized and existing under the laws of Washington, a copy of its articles being attached as an exhibit (Rec. p. 48), and that a majority of its issued stock is owned by the West Kootenay Power & Light Company, Ltd., of Canada, an alien corporation; that appellant since 1917 has been and is engaged in the transmission of electric current, generated in the Dominion of Canada, from a point in the Province of British Columbia across the International Boundary into the State of Washington, where it is sold and distributed to the inhabitants of the Town of Northport in that state, under a franchise from said town (Rec. p. 42-47), and to other distributees; also, that it owns and is engaged in the development of mining properties in Stevens County, Washington, in which development, and in the manufacture of products therefrom, it requires and uses

a part of said electric energy; that appellant since 1917 has been and is the owner of certain right-of-way easements and franchises in the State of Washington, copies of deeds being attached as exhibits (Rec. p.7-42), on which are located its transmission lines and power station used in conveying and distributing in the State of Washington, the electric current so transmitted from Canada; that all of said easements and franchises are necessary instruments in the transmission and distribution of said electric current in foreign commerce and are necessary to the continuation of appellant's business.

Sec. 33, Art. II of the Constitution of Washington, reads:

> "The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this State, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly or in trust for such alien shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal or fire-clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. *Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition.*" (Italics ours.)

The State of Washington in 1921 enacted a statute, supplemental to and somewhat broader than the above constitutional provision, Chap. 50 of the 1921 Session Acts, being Sec. 10581, et. seq. of Rem. Comp. Stat. of Washington, set out in full as Appendix I hereto.

Section 3852 of Rem. Comp. Stat. of Washington, set out in full as Appendix II, provides on the other hand in part as follows:

> "Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state, or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this state, shall have full power and is hereby authorized * * * to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of, in the corporate name, all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its corporation. * * *.

Article II of appellant's articles of incorporation (Rec. p. 48) indicates that it was formed for the following, among other, purposes:

> "First, to buy, own, obtain, sell, generate, install, develop, distribute and deliver any water, steam, electrical, gas or other power or heat; to buy, erect, maintain, operate, sell, dispose of and convey power plants, transmission lines, power stations and sub-plants; to obtain, buy, lease, own and hold municipal light and power franchises and buy plants, machinery, lines and appliances necessary to maintain and operate the same, and to sell and deliver to municipalities and to public and private corporations and private citizens, electrical

current and other power for heat, power, lighting and other purposes.

"Fourth, to buy, obtain, own sell and mortgage real estate and personal property and to borrow money in the name of the corporation and give notes, bonds, mortgages or other securities for same."

The complaint alleges that because of the alien ownership of the majority of the capital stock of appellant corporation, appellees, as Governor and Attorney-General, respectively, have threatened to enforce, and unless restrained by order of court will enforce against appellant the aforesaid constitutional and statutory provisions, and will, by a suit at law in the Courts of Washington, wrongfully and illegally forfeit and escheat or attempt to forfeit and escheat to the state, the aforesaid easements upon which are located appellant's transmission lines and power station together with all improvements thereon; that in consequence, unless appellees be enjoined by decree of Court, appellant will be deprived of its property; that its business and the foreign commerce in which it is engaged will be irreparably injured, damaged and destroyed, and that appellant is without adequate remedy at law.

The complaint further alleges that said provision of the Constitution of Washington and said act of the legislature, and the enforcement thereof by appel-

lees against appellant and its said property, are and would be in contravention of and repugnant to the Commerce Clause of Sec. 8, Art. I; likewise, the Contract Clause, Sec. 10, Art. I; likewise the Due Process and Equal Protection Clauses, Sec. I of the 14th Amendment, to the Federal Constitution; likewise, the 1815 Commerce Treaty between the United States and Great Britain, as extended and continued by the Treaty of 1827; also the Due Process Clause, Sec. 3, the Equality and Equal Protection Clause, Sec. 12, and the Contract Clause, Sec. 23, Article I, of the Constitution of Washington.

Pursuant to the prayer of the complaint, a temporary restaining order was issued (Rec. p. 52), and by the same order appellees were required to appear and show cause why an interlocutory injunction pendente lite should not issue.

On the subsequent hearing, before a three judge court, appellees filed a motion to dismiss the bill of complaint (Rec. p. 55), on the following grounds,

> "1. Said bill of complaint does not state any matters of equity entitling the plaintiff to the relief prayed for;
>
> 2. Said bill of complaint does not state facts sufficient to entitle plaintiff to any relief against these defendants or either of them;

3. The plaintiff has a plain, adequate and complete remedy at law."

The court filed an opinion (Rec. p. 6, 35 Fed. (2nd) 199, 202) denying the motion for an interlocutory injunction and granting the motion to dismiss.

A petition by appellant for a rehearing (Rec. p. 62) was denied (Rec. p. 63).

Thereafter, pursuant to said opinion, a judgment was entered (Rec. p. 63), omitting formal parts, as follows:

"This matter having heretofore come regularly on for hearing before Hon. Frank S. Dietrich, circuit judge, Hon. George M. Bourquin and Hon. Edward E. Cushman, district judges, upon motion of plaintiff for an interlocutory injunction and the motion of defendants to dismiss the bill of complaint, and the court having heard the argument of counsel and having heretofore entered its memorandum opinion herein and having denied the plaintiff's petition for rehearing, and being now fully advised in the premises, in accordance with said memorandum decision, and upon the grounds that the court has no jurisdiction of this action because it appears from the complaint herein that plaintiff has a plain, adequate and complete remedy at law in the premises, it is

Ordered, adjudged and decreed (1) that plaintiff's motion for an interlocutory injunction be and the same hereby is denied: (2) that defendant's motion to dismiss the bill of complain— be and the same hereby is granted; (3) that

this action be and the same hereby is dismissed; and (4) that defendants do have and recover of and from plaintiff their costs to be hereinafter taxed."

Appellant thereupon filed its assignment of errors (Rec. p. 64) and petition for an appeal from the above judgment and decree (Rec. p. 67), which was allowed by order of the District Court (Rec. p. 67).

SPECIFICATION OF ERRORS

Errors assigned below and intended to be urged on this appeal are specified as follows:

I

Assigned errors Nos. 1 and 2 (Rec. p. 64) are addressed to the denial by the lower court of appellant's motion for and its refusal to grant an interlocutory injunction as prayed in the bill of complaint.

II

Assigned errors Nos. 3 and 4 (Rec. p. 64) are addressed to the granting by the lower court of appellees' motion to dismiss and its dismissal of the suit.

III

Assigned error No. 5 (Rec. p. 64) is addressed to the awarding by the lower court of judgment to appellees for their costs.

IV

Assigned error No. 6 (Rec. p. 64) is addressed to the holding of the lower court that appellant had and has a plain, adequate and complete remedy at law.

V

Assigned errors Nos. 7 and 8 (Rec. p. 64, 65) are addressed to the holding of the lower court that it had no jurisdiction of and its refusal to exercise jurisdiction in and over the action or cause.

VI

Assigned error No. 9 (Rec. p. 65) is addressed to the refusal of the lower court to hold and declare Chapter 50 of the 1921 Session Acts of the State of Washington, ineffective, inoperative, inapplicable and void in so far as by its terms said statute may apply or be thought to apply to or restrict or limit the rights and interests of appellant alleged and described in the complaint, as and because in conflict with (a) the Due Process Clause, Sec. III; (b) the Equal Protection Clause, Sec. XII; and (c) the Contract Clause, Sec. XXIII of Art. I of the Constitution of the State of Washington.

VII

Assigned error No. 10 (Rec. p. 65) is addressed to the omission and refusal of the lower court to hold and decide that the threatened action and legal proceedings by appellees for the escheat and forfeiture of the properties, rights and interests of appellant, as alleged in the complaint, would be in violation of that provision of Sec. 33, Art. II of the Constitution of the State of Washington, excepting from the general provision of said section against alien ownership the necessary lands for mills and machinery to be used in the development and manufacture of products from alien owned lands containing valuable minerals, metals, iron, coal or fire clay.

VIII

Assigned error No. 11 (Rec. p. 65) is addressed to the omission and refusal of the lower court to declare Sec. 33 of Art. II of the Constitution of the State of Washington, ineffective, inoperative, inapplicable and void in so far as by its terms said section may apply, or be thought to apply, to (fol. 70) or restrict or limit the rights and interests of appellant alleged and described in the complaint, as and because in conflict with (a) the Commerce Clause, Sec. VIII, Art. I; (b) the Contract Clause, Sec. X,

Art. I; (c) the Due Process Clause of Sec. I of the 14th Amendment; and (d) the Equal Protection Clause of Sec. I, of the 14th Amendment to the Constitution of the United States.

IX

Assigned error No. 12 (Rec. p. 66) is addressed to the omission and refusal of the lower court to hold and declare Chapter 50 of the 1921 Session Acts of the State of Washington ineffective, inoperative, inapplicable and void in so far as by its terms said statute may apply, or be thought to apply, to or restrict or limit the rights and interests of appellant alleged and described in the complaint, as and because in conflict with, (a) the Commerce Clause, Sec. VIII, Art. I; (b) the Contract Clause, Sec. X, Art I; (c) the Due Process Clause of Sec. I of the 14th Amendment; and (d) the Equal Protection Clause of Sec. I of the 14th Amendment to the Constitution of the United States.

X

Assigned error No. 13 (Rec. p. 66) is addressed to the omission and refusal of the lower court to hold and declare Sec. 33 of Art. II of the Constitution of the State of Washington ineffective, inoperative, inapplicable and void in so far as by its term

said section may apply, or be thought to apply, to or restrict or limit the rights and interests of appellant alleged and described in the complaint, as and because in conflict with the 1815 Commerce Treaty between the United States and Great Britain, as extended and continued by the Treaty of 1827.

XI

Assigned error No. 14 (Rec. p. 66) is addressed to the omission and refusal of the lower court to hold and declare Chapter 50 of the 1921 Session Acts of the State of Washington ineffective, inoperative, inapplicable and void in so far as by its terms said section may apply, or be thought to apply, to (fol. 71) or restrict or limit the rights and interests of appellant alleged and described in the complaint, as and because in conflict with the 1815 Commerce Treaty between the United States and Great Britain, as extended and continued by the Treaty of 1827.

ARGUMENT

I

NO REMEDY AT LAW

(a) It is established that a remedy at law, to constitute an obstacle to equitable relief in the Federal Court, must be a remedy on the law side of that court.

Smyth vs. Ames, 169 U. S. 466, 478, 42 L. ed. 819, 838;

Chicago, B. & Q. R. Co. vs. Osborne, 265 U. S. 14, 16, 68 L. ed. 878, 880;

Risty vs. Chicago, R. I. & P. R. Co., 270 U. S. 378, 388, 70 L. ed. 642, 650;

Southern Ry Co. vs. Query, 21 Fed. (2d) 333;

Franklin vs. Nevada-Calif. Power Co., 264 Fed. 643, 645;

Fredenberg vs. Whitney, 240 Fed. 819, 829.

(b) It is likewise established that in order to be adequate, the remedy at law must be as complete, practical and efficient as that which equity could afford.

Walla Walla vs. Walla Walla Water Co., 172 U. S. 1, 43 L. ed. 341;

Ex Parte Young, 209 U. S. 123, 52 L. ed. 714, 13 L. R. A. (N. S.) 932, 14 Ann. Cas. 761;

Terrace vs. Thompson, 263 U. S. 197, 214, 68 L. ed. 255, 274;

Risty vs. Chicago, R. I. & P. R. Co., 270 U. S. 378, 388, 70 L. ed. 642, 650;

Jefferson vs. Gypsy Oil Co., 27 Fed. (2d) 304, 308;

Rast vs. VanDeman & Lewis Co., 240 U. S. 342, 355, 60 L. ed. 679, 689.

(c) No legal remedy can be adequate except it be vested in the complainant, in the sense that he may at all times resort thereto at his own option, fully and freely, without let or hindrance.

Fredenberg vs. Whitney, 240 Fed. 819, 822;

Bank vs. Stone, 88 Fed. 383, 397.

(d). The order and decree of dismissal (Rec. p. 63) expressly states that an interlocutory injunction is denied and the suit dismissed

> "* * * upon the ground that the court has no jurisdiction of this action because it appears from the complaint herein that plaintiff has a plain, adequate and complete remedy at law in the premises."

The opinion below (35 Fed. (2d) 199, 202, Rec. p. 61) makes it clear that the District Court viewed, as constituting a remedy at law, the right which appellant would have to appear and defend in the state court against the forfeiture proceeding the institution of which this suit seeks to restrain. This view entirely disregards and is in direct conflict with the above

postulates. It contemplates submission, in the first instance, to destruction of property and irreparable damage—the antithesis of due process of law.

Obviously the right to prevent an impending wrong, certain to work irreparable injury, is a very different thing from the right to defend against that wrong after it shall have been set in motion, and the irreparable injury in part at least, has been accomplished. In the situation disclosed by the complaint, it is apparent that the right to appear and defend in the state court, against the identical proceeding sought by this suit to be prevented, would not, in the very nature of the situation, be adequate or in any sense complete.

As said in *Public Service Co. of Northern Illinois vs. Corboy*, 250 U. S. 153, 159, 63 L. ed. 905, 908,

> "Although a state may not be sued without its consent, nevertheless a state officer acting under color of his official authority may be enjoined from carrying into effect a state law asserted to be repugnant to the Constitution of the United States even though such injunction may cause the state law to remain inoperative until the constitutional question is judicially determined. The doctrine is elementary, but we refer to a few of the leading cases by which it is sustined."

With respect to the contention, under analagous facts, that no power existed in the Federal Court to

restrain action by state officers, under an allegedly unconstitutional state statute, until by final action of an appropriate state court it should be decided that the statute, and the things threatened to be done thereunder, were not in fact repugnant to the constitution, in *Home Teleph. & Teleg. Co. vs. Los Angeles*, 227 U. S. 278, 284, 57 L. ed. 510, 514, it is said:

> "Thus, being applicable equally to all Federal Courts, under all circumstances, in every stage of a proceeding, the enforcement of the doctrine would hence render impossible the performance of the duty with which the Federal courts are charged under the Constitution. Such paralysis would inevitably ensue, since the consequence would be that, at least in every case where there was a coincidence between a national safeguard or prohibition and a state one, the power of the Federal court to afford protection to a claim of right under the Constitution of the United States, as against the action of a state or its officers, would depend on the ultimate determination of the state courts, and would therefore require a stay of all action to await such determination. * * * It is manifest that, in necessary operation, the doctrine which was sustained would in substance, cause the state courts to become the primary source for applying and enforcing the constitution of the United States in all cases covered by the 14th Amendment. * * * The vice which not only underlies but permeates the proposition is not far to seek. It consists, first, in causing by an artificial construction the provisions of the 14th Amendment not to reach those to whom they are addressed when reasonably construed; and, second, in wholly misconceiving the scope and operation of the

14th Amendment, thereby removing from the control of the Amendment the great body of rights which it was intended it should safeguard, and in taking out of reach of its prohibitions the wrongs which it was the purpose of the Amendment to condemn."

To the same effect,

Ex Parte Young, 209 U. S. 123, 163, 52 L. ed. 714, 730;

Green vs. Louisville, etc. Ry. Co., 244 U. S. 499, 506, 61 L. ed. 1280, 1285;

Oklahoma Natural Gas Co. vs. Russell, 261 U. S. 290, 293, 67 L. ed. 659, 662;

Banton vs. Belt Line Ry. Corp., 268 U. S. 413, 417, 69 L. ed. 1020, 1024.

(e) Though it be conceded, for purposes of argument, that appellant had a remedy in the state court, under the conditions admitted for present purposes by the motion to dismiss, a constitutional right being insisted on, exhaustion of that remedy would not be a condition precedent to relief in the Federal Court.

Railroad & Warehouse Comm. vs. Duluth Street R. Co., 273 U. S. 625, 628, 71 L. ed. 807, 810;

Pacific Teleph. & Teleg. Co. vs. Kuykendall, 265 U. S. 196, 68 L. ed. 975;

Oklahoma Natural Gas Co. vs. Russell, 261 U. S. 290, 67 L. ed. 659.

(f) It is of importance, furthermore, that this application is under an act of Congress, U. S. C., Sec. 380, Judicial Code, Sec. 266, especially providing for the issuance of an injunction restraining state officers from enforcing unconstitutional statutes. The fact, therefore, that Congress has seen fit specially to authorize injunctive relief and to indicate the procedure, in situations of the character disclosed by the complaint, should of itself, it would seem, largely modify with respect to applications under the statute, earlier judicial pronouncements concerning generally the granting and the refusing of injunctions. To deny relief on an application under this statute on the general ground, without regard to the particular facts, that an adequate remedy is afforded by the identical state statute, the enforcement of which by action thereunder is sought to be enjoined as unconstitutional, would appear to negative, circumvent and render inoperative the act of Congress recognizing the right and prescribing the practice appropriate to obtaining the relief sought.

(g) The two cases,

Boise Artesian Water Co. vs. Boise City, 213 U. S. 276, 53 L. ed. 793; and

Cavanaugh vs. Looney, 248 U. S. 453, 456, 63 L. ed. 354, 357,

on which the opinion below appears principally to be based, are readily distinguishable. In the first case, *Boise Artesian Water Co. vs. Boise City,* supra, it was sought to restrain the collection of a monthly license fee, Holding that an injunction should not be granted, in the absence of a showing that enforcement of the ordinance imposing the license would work an irreparable injury, the opinion states,

> "The only suggestions of this kind which the bill presents are that the enforcement of the ordinance will lead to irreparable injury, to multiplicity of suits, and cast a cloud upon the company's title to its franchise.
>
> But there is nothing in the bill which leads us to suppose that any of these results would be brought about by leaving the company to its defense at law."

In contradistinction to the language just quoted, pointing out the conditions, absent there but present here, that would have justified equitable relief, the opinion further states,

> "If the city had taken any steps indicating a purpose to remove the pipes and works of the company from the streets of the city, and to deny it the right to continue its business, there would be clear reason for the interposition of a court of equity, for if that were done illegally or unconstitutionally an injury would be inflicted for which the law could afford no adequate remedy. In such a case it would be the plain duty of a court of equity to arrest the destructive steps until their legality or constitutionality could be determined. Such a course would be for the best interests of both parties."

Than the language just quoted, it is believed that no stronger argument could be made on appellant's behalf. It certainly does not support the opinion below.

In the second case, *Cavanaugh vs. Looney,* no question of foreign or interstate commerce, nor of the destruction or the working of irreparable injury to an established business was involved but an injunction was sought to prevent the taking by eminent domain proceedings in a state court of certain apparently vacant lands. The true basis of the opinion, in no wise antagonistic to appellant's contention, is found, we believe, in the following excerpt therefrom.

> "When considered in connection with established rules of law relating to the power of eminent domain, complainant's allegation of

> threatened 'irreparable loss and damage' appears fanciful. The detailed circumstances negative such view and rather tend to support the contrary one."

There is reference also, in the opinion below, to *Terrace vs. Thompson,* 263 U. S. 197, 215, 68 L. ed. 255, 274, and *Webb vs. O'Brien,* 263 U. S. 313, 321, 68 L. ed. 318, 321, and the opinion in the first case is quoted to show the dire necessity there prevailing, including not only property loss but criminal liability as well. More to the point, we respectfully submit, is the further statement in *Terrace vs. Thompson,*

> "But the legal remedy must be as complete, practical and efficient as that which equity could afford."

While it is true that this case does not, as did *Terrace vs. Thompson,* contemplate the peril of criminal proceedings, the criminal phase of the statute there involved was in no sense indispensible to or determinative of the view there expressed with reference to the granting of equitable relief. That case did not, on the other hand, involve any question of protection from confiscation and destruction of foreign commerce, which is the immediate object of the present proceeding, upon which application was made to the District Court under the Commerce Clause and other provisions of the Federal Constitution, heretofore enumerated.

II

JURISDICTION

(a) The complaint alleges threatened enforcement by state officers of provisions of a state constitution and statute attacked as repugnant to the Federal Constitution, which necessarily, if consummated, would work irreparable damage to appellant's property and burden and destroy foreign commerce. The allegations of fact stand admitted by the motion to dismiss. That the District Court had jurisdiction of the parties and the subject matter is not disputed. Hence, the complaint states cause for injunctive relief under Sec. 266 of the Judicial Code as amended, U. S. C. Title 28, Sec. 380.

Ohio Oil Co. vs. Conway, 279 U. S. 813, 73 L. ed. 972;

Rast vs. VanDeman & Lewis Co., 240 U. S. 342, 355, 60 L. ed. 679, 686;

Louisville & N. R. Co. vs. Garrett, 231 U. S. 298, 303, 58 L. ed. 229, 239;

Phoenix Ry. Co. vs. Garry, 239 U. S. 277, 281, 60 L. ed. 287, 289;

Ex parte Northern Pacific Ry. Co., 280 U. S. 142, 74 L. ed. 124;

Binderup vs. Pathe Exch., 263 U. S. 291, 309, 68 L. ed. 308, 316;

Terrace vs. Thompson, 263 U. S. 197, 216, 68 L. ed. 255, 263;

Truax vs. Raich, 239 U. S. 33, 37, 60 L. ed. 131, 133.

Federal jurisdiction is invoked by the complaint, to restrain state officers from the commission of acts, sought to be justified by provisions of the State Constitution, alleged by the complaint to be in conflict with the Federal Constitution. Except those allegations be found unsubstantial and not in good faith, that jurisdiction will not be lost, though it should be found that the acts sought to be restrained are in no sense authorized by the State Constitution.

Liberality should be the rule on applications for interlocutory injunctions where the questions are grave and the opposing party may be adequately indemnified against loss.

Ohio Oil Co. vs. Conway, 279 U. S. 813, 815, 73 L. ed. 972, 973.

As said in *Oklahoma Natural Gas Co. vs. Russell*, 261 U. S. 290, 292, 67 L. ed. 659, 662, Sec. 266 of the Judicial Code, Sec. 380, Title 28, U. S. C., as

amended, "plainly was intended to enlarge, not restrict the law."

(b) A wrongful act can never be justified by a wrong interpretation of a valid law and appellant would be entitled to protection, however Sec. 33, Art II of the State Constitution be construed, provided the acts alleged as grounds for Federal jurisdiction and sought to be enjoined are in fact violative of rights vouchsafed by the Federal Constitution.

As said in *Reagan vs. Farmer's Loan & T. Co.*, 154 U. S. 362, 390, 38 L. ed. 1014, 1021, and quoted with approval in *Greene vs. Louisville & I. R. Co.*, 244 U. S. 499, 507, 61 L. ed. 1280, 1285,

> "The principle is not confined to the maintenance of suits for restraining the enforcement of statutes which, as enacted by the state legislature, are in themselves unconstitutional. * * * Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal Court of jurisdiction. A valid law may be wrongfully administered by officers of the state, and so as to make such administration an illegal burden and exaction upon the individual."

To same effect, citing authorities,

Fidelity & D. Co. vs. Tafoya, 270 U. S. 426, 434, 70 L. ed. 664, 667;

Herkness vs. Irion, 278 U. S. 92, 94, 73 L. ed. 198, 199.

(c) Beyond dispute, the objection in an equity suit, that there is an adequate remedy at law, goes not to the jurisdiction of the court, as a Federal Court, but to the character or quality only of the relief available.

Twist vs. Prairie Oil & Gas Co., 274 U. S. 684, 690, 71 L. ed. 1297, 1301;

Smith vs. McKay, 161 U. S. 355, 40 L. ed. 731;

Blythe vs. Hinckley, 173 U. S. 501, 43 L. ed. 783;

Pusey & Jones Co. vs. Hanssen, 261 U. S. 491, 67 L. ed. 763, 772;

Jefferson vs. Gypsy Oil Co., 27 Fed. (2d) 304, 307;

Illinois Central Ry. Co. vs. Adams, 180 U. S. 28, 41, 45 L. ed. 410, 412;

Savage vs. Jones, 225 U. S. 501, 540, 56 L. ed. 1182;

Scully vs. Bird, 209 U. S. 481, 490, 52 L. ed. 902;

Kelly vs. United States, 30 Fed. (2d) 193, 194.

It follows, though the existence of an adequate legal remedy be for the moment conceded, that the suit

instead of being dismissed should have been transferred to the law side of the Federal Court.

Twist vs. Prairie Oil & Gas Co., 274 U. S. 684, 690, 71 L. ed. 1297, 1301;

Rice & Adams Corp. vs. Lathrop, 278 U. S. 509, 514, 73 L. ed. 480, 482;

Kelly vs. United States, 30 Fed. (2d), 193, 194.

Thus in *Twist vs. Prairie Oil & Gas Co.*, supra, it is said,

> "Formerly if a plaintiff in a federal court sued in equity and the objection that there was a plain, adequate and complete remedy at law was sustained, the bill was necessarily dismissed. * * * Now, under the Act of March 3, 1915, chap. 90, 274a, 38 Stat. at L. 956, U. S. C. title 28, 397, and Equity Rules 22 and 23, if the suit was improperly brought in equity, either the trial court or the appellate court may transfer the case to the law side. * * * the objection that the bill does not make a case within the equity jurisdiction of a federal court goes not to the power of the court, but to the merits.

III

SCOPE OF INQUIRY

(a) The circumstance that the order and decree of dismissal recites that the court was without jurisdiction, in that appellant had a plain and adequate

remedy at law, upon which ground, among others, the complaint was attacked by the motion to dismiss, does not alter the fact that the court exercised general jurisdiction in the rendition and entry of its order and decree.

As said in *Twist vs. Prairie Oil & Gas Co.*, 274 U. S. 684, 691, 71 L. ed. 1297, 1302,

> "The objection that the bill does not make a case within the equity jurisdiction of the Federal Court goes not to the power of the court as a Federal Court but to the merits."

In the language of *Flanders vs. Coleman*, 250 U. S. 223, 228, 63 L. ed. 948, 950,

> "The opinion of the district court shows that it really considered the merits of the case in reaching the conclusion that it was without jurisdiction."

Also,

Binderup vs. Pathe Exch., 263, U. S. 291, 305, 68 L. ed. 308, 314.

(b) Since the lower court asserted and exercised jurisdiction over the merits, all questions there open for decision are subject to review on this appeal,

Hopkins vs. Southern Calif. Tel. Co., 275 U. S. 393, 399, 72 L. ed. 329, 336;

Greene vs. Louisville & I. R. Co., 244 U. S. 499, 508, 61 L. ed. 1280, 1286;

Shaffer vs. Carter, 252 U. S. 37, 49, 64 L. ed. 445, 455;

Twist vs. Prairie Oil & Gas Co., 274 U. S. 684, 691, 71 L. ed. 1297, 1302,

including non-Federal questions upon which, if possible, the decision will be made to rest without consideration of the Federal questions presented.

Siler vs. Louisville & N. R. Co., 213 U. S. 175, 195, 53 L. ed. 753, 757;

Ohio Tax Cases, 232 U. S. 576, 586, 58 L. ed. 738, 743;

Greene vs. Louisville & I. R. Co., 244 U. S. 499, 508, 61 L. ed. 1280, 1286;

United Fuel & Gas Co. vs. Railroad Commission, 278 U. S. 300, 307, 73 L. ed. 390, 395.

IV

GRANTS NOT WITHIN INHIBITION

(a) The inhibitive Section 33, Article II, of the Constitution of Washington, reads,

"The ownership of lands by aliens, other than those who in good faith have declared their in-

tention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly or in trust for such alien shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition."

A supplemental statute, enacted in 1921, somewhat broader than the constitutional provision, Laws of Washington 1921, Chap. 50, a copy of which is attached as an appendix, must, it is believed, be put entirely out of consideration as inapplicable to the easements here involved, all of which were acquired in 1917. Such is the holding of the Supreme Court of Washington.

State vs. Natsuhara, 136 Wash. 436, 444, 240 Pac. 557;

State vs. Matomatsu, 139 Wash. 639, 247 Pac. 1032.

In the closing sentence of the opinion in the Natsuhara case it is said,

"We therefore, conclude that the Act of 1921 does not, and was not intended to, apply to valid leases entered into in good faith prior to its enactment."

Even were the question not set at rest by the quoted decision of the State Supreme Court, with respect to appellant's antecedent property and contract rights, including its municipal franchises, the 1921 Statute is repugnant not alone to the Due Process and Equal Protection Clauses of the 14th Amendment, but violates at the same time, with respect to appellant's antecedent rights, the Contract Clause, Sec, 10, Art. I of the Federal Constitution.

Columbus etc. Ry. Co. vs. Columbus, 249 U. S. 399, 63 L. ed. 669, 676;

Frost vs. Corporation Commission, 278 U. S. 515, 553, 73 L. ed. 483;

Hanover etc. Co. vs. Carr, 272 U. S. 494, 517, 71 L. ed. 372, 379;

City of Dayton vs. City Ry. Co., 16 Fed. (2d) 401.

(b) Bearing in mind that the constitutional inhibition, with which only, and not the statute, we are concerned, is restricted to

"the ownership of lands by aliens,"

we turn now to the right-of-way conveyances attached as exhibits to the complaint (Rec. pp. 7 to 43, inclusive), some of which, but not all, specifically provide for reversion when use for right-of-way purposes shall cease (the others on abandonment would revert by operation of law, 19 C. J., 940, Sec. 149), we find that the grant, identical in the several instruments, is not of "ownership" or title, but for the

> "full, free and uninterrupted right, liberty, privilege and authority to construct, operate and maintain its (appellant's) Power Lines, including all necessary and proper poles, wires, fixtures, appliances and appurtenances,"

from which we conclude that the rights here involved do not come within the ban of the constiution, as distinguished from the 1921 legislative act, with which, as shown, we are not here concerned.

The Supreme Court of Washington from an early period has consistently held that a lease of real estate, for however long a period, is personal property.

Tibbals vs. Iffland, 10 Wash. 451, 455, 39 Pac. 102;

American Sav. Bk. & Tr. Co. vs. Mafridge, 60 Wash, 180, 185, 110 Pac. 1015;

Taylor vs. Basye, 119 Wash. 263, 265, 205 Pac. 16;

Myers vs. Arthur, 135 Wash. 583, 585, 238 Pac. 899;

Salisbury vs. Alskog, 144 Wash. 88, 89, 256 Pac. 1030;

Barr vs. Campbell Mill Co., 154 Wash. 83, 85, 280 Pac. 929.

The last case cited, *Barr vs. Campbell Mill Co.*, is directly in point, holding that an easement in the form of a logging road, is not real estate but mere personal property.

> "The question then is, is an easement such as was here contemplated, real estate within the terms of the statute. We think the question has been answered in *Myers vs. Arthur*, 135 Wash. 583, 238 Pac. 899, where this court said:
>
> 'In this state, while the statute with reference to conveyances, 10550, Remp. Comp. Stat. (P. C. 1909), provides, 'All conveyances of real estate or any interest therein, . . . shall be by deed,' the statute applicable to the present case says only 'real estate' and does not include the words 'interest in real estate.' * * * If the purchase or sale of a leasehold regardless of its term of years is not a sale of real estate, then certainly the purchase or sale of an easement which, by its terms, is limited 'to continue so long as the right-of-way is used for hauling logs,' is not a sale of real estate, and is nothing but a chattel real and is personal property."

We are not unmindful of the holding of the State

Supreme Court that a lease to an alien, in order to be valid under the constitutional inhibition, must be for a reasonable period, a relative term depending on the circumstances in the given case.

State vs. Natsuhara, 136 Wash. 437, 240 Pac. 557;

State vs. Matomatsu, 139 Wash. 639, 247 Pac. 1032;

State Ex Rel Winston vs. Morrison, 18 Wash. 664, 52 Pac. 228.

We contend, however, that this doctrine is altogether inconsistent with the recent and fully reasoned conclusion by the same court in the cases last cited, particularly, *Barr vs. Campbell Co.*, holding that a logging road easement, to continue so long as used for that purpose, is not real estate but personal property.

(c) Examination of the authorities leads to the conclusion that the rights held by appellant are nothing more than easements in gross, mere personal rights or licenses as distinguished from easements appurtenant. As said in 9 R. C. L., 739,

"There is, however, a class of rights which are impressed upon the land of one person in favor

> of another person or other persons, and not in favor of another tract of land, and these rights are sometimes spoken of by courts and legal writers as 'easements in gross.' * * * The easement is in gross, and personal to the grantee, because it is not appurtenant to other premises."

Still more to the point, we quote from 19 C. J. 867,

> "* * * thus, among other easements, a right-of-way which has neither of its termini on the premises of the owner and is not appurtenant to any estate is called a right-of-way in gross; it is a mere personal right and is neither assignable nor inheritable, nor can it be made so by any terms in the grant."

On the other hand, as explained in *Branan vs. Wimsatt,* 298 Fed. 833, 836,

> "An easement appurtenant cannot exist without a dominant tenement, and an easement in gross cannot be acquired except by a grant in writing or by prescription, which presupposses a grant."

And, quoting again from 9 R. C. L. at page 737,

> "It (an easement appurtenant) is incapable of existence separate and apart from the particular land to which it is annexed."

An easement in gross, therefore, is everywhere declared to be personalty and subject in all respects to be delt with as such under the law.

"An easement in gross, as the term is now commonly used, is a mere personal right in the land of another, while an easement appurtenant is an incorporeal right which is attached to and belongs to some greater or superior right."

Stovall vs. Coggins Granite Co., 42 S. E. 723, 724.

"An easement in gross is a mere personal interest in the real estate of another, and is not assignable or inheritable. It dies with the person, and it is so exclusively personal that the owner by right cannot take another person in company with him."

Ernst vs. Allen, et al, 184 Pac. 827, 829.

That the rights here in question fall within the latter class, easements in gross, is established by authority.

The recent Illinois case of *Waller vs. Hildebrecht*, 128 N. E. 807, 809, well illustrates the distinction.

"Generally speaking, where a particular or special right or easement in land, is conveyed, which may well co-exist and be enjoyed and used by the grantee consistently with the ownership of the fee in the grantor, the fee does not pass because it is not essential to the right or interest which is described in the deed. * * * There is nothing in the deed to indicate that the parties intended the right-of-way over the south 10 feet of lot 6 to be appurtenant to lot 7. William Grus was not the owner of lot 7, and so far as appears from this record was not the owner

of any land. There is no dominant estate, and there being no dominant estate there can be no easement. The right-of-way, therefore, is in gross and personal to William Grus, because it is not appurtenant to any other premises. *Garrison vs. Rudd,* 19 Ill. 558; *Willoughby vs. Lawrence,* 116 Ill. 11, 4 N. E. 356, 56 Am. Rep. 758. Being a right personal to Grus, it was incapable of assignment, and appellant took no interest in this portion of lot 6 by virtue of the conveyance to her of lot 7."

Also, from *Kershaw vs. Burns,* 74 S. E. 378, 379,

"A right of way may be in gross, or it may be appendent or appurtenant to land, and the distinction between the two kinds of rights are very marked and important. In the former, it is a mere personal privilege, which dies with the person who may have acquired it; while in the latter it inheres in the land to which it is appurtenant, is essentially necessary to its enjoyment, and passes with it. * * * A right of way which has neither of its termini on the premises of the grantee, and is not essentially necessary to the enjoyment of his premises, is not appurtenant to the grantee, and cannot be by him transferred, notwithstanding the grant is to him for value and to his heirs and assigns forever."

The principle is well stated in 33 Cyc., 169,

"A a general rule, however, if the deed purports to convey only a right of way, it does not convey the land itself but the fee remains in the grantor, and the railroad company acquires a mere easement in perpetuity in the land, for railroad purposes, although the conveyance is in the usual form of a full warranty deed."

In harmony also, are

Reichenbach vs. Washington Short Line R. Co., 10 Wash. 357, 38 Pac. 1126;

Knapp vs. Crawford, 16 Wash. 524, 48 Pac. 261;

Spokane vs. Colby, 16 Wash. 610, 48 Pac. 248;

Pacific Iron Works vs. Bryant Lumber Co., 60 Wash. 502, 111 Pac. 578;

Neitzel vs. Spokane International R. Co., 65 Wash. 100, 117 Pac. 864;

Boatman vs. Lasley, 23 Oh. St. 614;

Stockdale vs. Yerden, 190 N. W. 225.

We conclude, therefore, that the property which appellees, as officers thereof, propose to escheat to the State, being personal property, does not come within the purview of the provision of the State Constitution prohibiting alien ownership of land.

(d) Paragraph XI of the complaint (Rec. p. 5) alleges that appellant is the owner and engaged in the development of mining properties in Stevens County, Washington, in which development and for the manufacture of products therefrom it requires and utilizes a part of the electric energy in question, and protec-

tion of the exception from the inhibition of Sec. 33, Art. II of the State Constitution of mineral lands and

> "the necessary land for mills and machinery to be used in the development thereof and the manufacture of products therefrom,"

is claimed on that account.

While it does not appear that this clause of Sec. 33 has ever been construed by the Supreme Court of Washington and the question is, therefore, of first impression, it is appellant's contention that land burdened with transmission lines and substations necessary for the delivery of power used in the operation of mills and machinery necessary for the development of mineral lands is in fact "necessary land for mills and machinery." since the mills and machinery could not be operated and would be useless without power which, in the form of electricity, can only be obtained through the construction and maintenance of transmission lines and substations.

V

CONTRACT IMPAIRED, EQUAL PROTECTION AND DUE PROCESS OF LAW DENIED

(a) The closing sentence of Sec. 33, Art. II of the State Constitution, reading

> "Every corporation, the majority of the capital

> stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition,"

is believed to violate not only the contract clause, Art. I, Sec. 10 of the Federal Constitution, the Equal Protection and Due Process Clauses of the 14th Amendment and corresponding provisions of the state constitution, but to be, at the same time, in plain conflict with and violative of Sec. 12, of Art. I (the Bill of Rights) of the Constitution of Washington, reading

> "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations."

In the face of the language last quoted, it is not believed that logically it can be contended that appellant corporation, organized and existing under and by virtue of the laws of the State of Washington, is not endowed with and entitled to exercise privileges and immunities equal in all respects to those legally exercisable by any other corporation so organized and existing, regardless of the purely incidental and transient circumstances of the ownership at a particular time of the majority of its capital stock. Obviously, however, it cannot exercise, equally or at all, privileges and immunities belonging to other corporations if Sec. 33 of Art. II is to be given force and effect.

Furthermore, no argument is required to demonstrate that under the closing sentence of Sec. 33, Art. II of the State Constitution, a non-consenting and helpless minority stockholder of a Washington corporation might be deprived of his property, irreperably injured and left entirely without redress through transfer to aliens by the owners of a majority of the capital stock.

The conception of a private corporation as an individual entity wholly separate and apart in a legal sense from, and in no wise affected by changes in the ownership of its capital stock is ancient and universal.

Providence Bank vs. Billings, 4 Peters 514, 562, 4 L. ed. 939,

1 Blackstone Comm. p. 468;

Dartmouth College vs. Woodward, 4 Wheat. 518, 657, 4 L. ed. 629;

Peterson vs. Chicago, R. I. & P. Ry. Co., 205 U. S. 364, 391, 51 L. ed. 841, 852;

State ex rel vs. Tacoma Ry. Co., 61 Wash. 507, 513, 112 Pac. 506;

Davis vs. Bigelow Bldg. Co., 150 Wash. 576, 577, 274 Pac. 106;

1 Thompson on Corporations (3d ed.) Sec. 9.

As said long ago in *Providence Bank vs. Billings*, supra,

> "The great object of an incorporation is to bestow the character and properties of individuality on a collective and changing body of men."

Appellant contends, therefore, that the clause of Sec 33, Art. II of the State Constitution now in question, being in clear conflict both with fundamentals and with the earlier, more general and more dominant provision, Sec. 12, Art. I of the same constitution, as well as the Equal Protection and Due Process Clauses of the 14th Amendment to the Federal Constitution, hereafter discussed, is inoperative and must be disregarded.

This view finds strong support in the opinion of the State Supreme Court in *Hastings vs. Anacortes Packing Co.*, 29 Wash. 224, 229, 230, 231, 69 Pac. 776, holding that a corporation under the laws of Washington is a citizen of the state, though a majority of its stock be owned by aliens. It is there said:

> "We cannot agree that a corporation organized and existing under and by virtue of the laws of this state is an alien because a majority of its capital stock is owned by aliens. * * * The legislature of this state has by general law authorized the formation of corporations to engage in the business for which the respondent corporation was organized to engage in. The act, after providing generally the purposes for which corporations may be organized, further provides that 'any two or

more persons' may organize a corporation for one or more of such purposes. (Ballinger's Code, 4250, et. seq.) It nowhere requires that the incorporators shall be citizens of the State or of the United States, nor does it require that the holders of a majority of the capital stock of the corporation shall be citizens of the state, or of the United States, * * * The language of the constitution on this subject is particularly restrictive. After prohibiting alien ownership of lands, it provides that 'every corporation the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition,'—*not that it shall be considered an alien for all purposes, or for any other purpose than the ownership of lands.* For all other purposes (than owning of lands) a corporation organized under the laws of the state, a majority of the capital stock of which is held by aliens, *is a domestic corporation,—a citizen of the state,*—and has all the rights and privileges the law accords to corporations generally." (Italics ours.)

The language just quoted is in harmony with Sec, 3852 of Rem. Comp. Stat. of Washington noted in our opening statement and set out in full as Appendix II, which by its terms, though somewhat inconsistently with other parts of the same section, provides that any corporation incorporated under the laws of any foreign country for any purpose for which domestic corporations are authorized to be formed under the laws of the state shall have full power and is authorized to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of all real estate or personal

property necessary or convenient for the carrying into effect of the objects and purposes of its formation.

Turning now to the consideration of other rights under the Federal Constitution, it is to be borne in mind that, as heretofore noted, appellant is authorized by its charter (Rec. p. 48) to buy, sell, own and operate power plants, transmission lines and power stations, also, to buy, sell and mortgage real estate in connection with its business of selling and distributing electric current for lighting and power purposes.

That the charter of a private corporation is a contract within the meaning of the Contract Clause of the Constitution has not been seriously questioned since the Dartmouth College case.

> *Minot vs. The Philadelphia, Wilmington & Baltimore R. Co.*, 18 Wall. 206, 225, 21 L. ed. 888.

As said in *Chicago, Burlington & Quincy Ry. Co. vs. Iowa*, 134 U. S. 155, 161, 24 L. ed. 94.

> "The Burlington and Missouri River Railroad Company, * * * was organized under the general corporation law of Iowa, with power to contract, in reference to its business, the same as private individuals * * * This is, in substance, its charter, and to that extent it is protected as by a contract; for it is now too late to contend that the charter of a corporation is not a contract within the mean-

> ing of that clause in the Constitution of the United States which prohibits a State from passing any law impairing the obligation of a contract."

Certainly, it would seem, if such a contract may not be impaired by legislation, for even stronger reasons under the 14th Amendment, the state should not be allowed to disregard or impair its obligation without legislative sanction.

The sanctity of a corporate charter is to be especially regarded where, as in the present instance, vested rights have been acquired thereunder.

> *Pearsall vs. Great Northern Ry. Co.*, 161 U. S. 646, 663, 40 L. ed. 838, 844.

It follows that appellant corporation is entitled to the privilege equally with other domestic corporations of maintaining its power lines and substations necessary for the conduct of its business, regardless of the not-illegal alien ownership of the majority of its stock. And this even though the ownership of real estate should become necessary to the exercise of its legitimate functions.

(b) It is well established, furthermore, on general principles, that a corporation possesses inherently such powers as may be necessary to enable it to carry into

effect the purposes for which it was created and for the exercise of all powers expressly granted.

Thompson on Corporations (3rd ed.), Sec. 2184, 2185, 2186.

As stated in Sec. 2188 of the same work,

> "Where an express power is granted to a corporation to do a particular act, or to engage in a stated business, this carries with it, by implication, the right to do every act which may be found reasonably necessary to give effect to the power expressly granted. On this principle every corporation, at least, in the absence of restrictive language, possesses the powers found necessary not only to its existence and self-preservation, but, as already said, to give effect to the powers expressly granted, or to effectuate the purposes and objects of the incorporation."

(c) That a corporation is a person within the meaning of the Due Process and Equal Protection Clauses of the 14th Amendment to the Federal Constitution is too well established to require extensive citation of authority.

Kentucky Finance Corp. vs. Paramount Auto Exch. Corp., 262 U. S. 544, 550, 67 L. ed. 1112, 1115;

Liggett vs. Baldrige, 278 U. S. 105, 111, 73 L. ed. 204, 208;

Frost vs. Corporation Commission, 278 U. S. 515, 552, 73 L. ed. 483, 488.

Appellant corporation, a creature of the State, cannot, except in the exercise of its police power, be deprived by the State of any privilege or immunity granted by its charter or accorded to other corporations, nor can it be required as a condition precedent to the privilege of exercising its normal functions, to relinquish rights guaranteed to all corporations alike by both the State and Federal Constitutions.

As said in *Quaker City Cab Co. vs. Pennsylvania,* 277 U. S. 389, 400, 73 L. ed. 927, 929,

> "Plaintiff in error is entitled in Pennsylvania to the same protection of equal laws that natural persons within its jurisdiction have a right to demand under like circumstances."

The following from *W. W. Cargill Co. vs. Minnesota,* etc., 180 U. S. 452, 468, 45 L. ed. 619, 626, is quoted with approval in *Power Mfg. Co. vs. Saunders,* 274 U. S. 490, 497, 71 L. ed. 1165, 1169,

> "* * * the acceptance of a license in whatever form, will not impose upon the licensee an obligation to respect or to comply with any provisions of the statute * * * that are repugnant to the Constitution of the United States."

As phrased in *Frost vs. Railroad Commission,* 271 U. S. 583, 596, 70 L. ed. 1101, 1106.

> "* * * the right to do business cannot be made to depend upon the surrender of a right created and guaranteed by the Federal Constitution."

Also,

> *Williams vs. Standard Oil Co.*, 278 U. S. 235, 241, 73 L. ed. 287, 309.

Furthermore, should it be contended that an exercise by the state of its police power is involved, it may be answered in the language of *Liggett vs. Baldrige*, supra, citing many authorities, that

> "A state cannot, 'under guise of protecting the public arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restriction upon them.'"

It follows that appellant, a creature of the State of Washington and a citizen thereof, under the ruling of its highest court,

> *Hastings vs. Anacortes Pack. Co.*, 29 Wash. 224, 231, 69 Pac. 776, 778,

canont legally be deprived of or denied the advantages of that citizenship because of the alien ownership at a given time of a majority of its capital stock. Constitutional rights cannot, we respectfully submit, be made to depend on the shifting circumstance of the ownership and transfer of ownership of the capital stock of

a private corporation, a thing wholly beyond the control of the corporation and minority stockholders since not prohibited or condemned by any law of the state.

(d) Transformation, dependent on ownership of its stock, of a domestic corporation, into an alien or foreign corporation in order that it may be deprived of its property is forbidden by the Due Process Clause of the 14th Amendment.

It has been repeatedly held that a private carrier cannot, consistently with the 14th Amendment, be converted into a public carrier by legislative fiat.

Washington ex rel vs. Kuykendall, 275 U. S. 207, 211, 72 L. ed. 241, 244;

Frost etc. Truck Co. vs. Railroad Comm., 271 U. S. 583, 592, 70 L. ed. 1101, 1104;

Michigan Public Utilities etc. vs. Duke, 266 U. S. 570, 577, 69 L. ed. 445, 449.

We therefore contend that it is no more competent for the state to declare that a domestic corporation, a citizen of the state (*Hastings vs. Anacortes Pack. Co.,* 29 Wash. 224, 230), shall become an alien incapable of owning land through the simple process of the change of ownership of a majority of its capital stock, though such stock ownership is not of itself illegal.

Quite apposite, though employed in a different connection, is the following from *Frost vs. Railroad Commission*, 271 U. S. 583, 591, 70 L. ed. 1101, 1103,

> "That court, while saying that the state was without power, by mere legislative fiat or even by constitutional enactment, to transmute a private carrier into a public carrier, declared that the state had the power to grant or altogether withhold from its citizens the privilege of using its public highways for the purpose of transacting private business thereon; and that, therefore, the legislature might grant the right on such conditions as it saw fit to impose. * * * That, consistently with the due process clause of the 14th Amendment, a private carrier cannot be converted against his will into a common carrier by mere legislative command is a rule not open to doubt and is not brought into question here. It was expressly so decided in *Michigan Pub. Utilities Commission vs. Duke*, 266 U. S. 570, 577, 578, 69 L. ed. 445, 449, 450, 36 A. L. R. 1105."

Even could it be held that in legal contemplation appellant is an alien, because of the alien ownership of a majority of its capital stock, its rights would not be thereby altered, since it is not open to question that aliens are entitled to due process and equal protection under the 14th Amendment.

Terrace vs. Thompson, 263 U. S. 197, 216, 68 L. ed. 255, 275;

Home Ins. Co. vs. Dick, 281 U. S. 397, 74 L. ed.

As said with respect to a foreign corporation which had complied with the conditions precedent to domestication,

> "The right to withhold from a foreign corporation permission to do local business therein does not enable the state to require such a corporation to surrender the protection of the Federal Constitution."

Quaker City Cab Co. vs. Pennsylvania, 277 U. S. 389, 400, 72 L. ed. 227, 229.

Pointedly to the same effect is the following from *Hanover Fire Ins. Co. vs. Carr*, 272 U. S. 494, 514, 515, 71 L. ed. 372, 382,

> "* * * while a state may forbid a foreign corporation to do business within its jurisdiction, or to continue it, it may not do so by imposing on a corporation a sacrifice of its constitutional rights. * * * By compliance with the valid conditions precedent, the foreign insurance company is put on a level with all other insurance companies of the same kind, domestic or foreign within the state, and tax laws made to apply after it has been so received into the state are to be considered laws enacted for the purpose of raising revenue for the state and must conform to the equal protection clause of the 14th Amendment."

VI

VIOLATION OF COMMERCE CLAUSE OF FEDERAL CONSTITUTION

(a) That the business in which appellant is en-

gaged constitutes foreign commerce is definitely established.

Public Utilities Comm. vs. Attelboro Steam & E. Co., 273 U. S. 83, 86, 71 L. ed. 549, 552;

Hagerla vs. Mississippi River Power Co., 202 Fed. 771, 786.

It is immediately obvious that this commerce would be utterly destroyed, not merely burdened and damaged, by the proposed action of the state which this suit seeks to enjoin.

Since the Federal Government has equal power for the regulation of foreign and interstate commerce, the pronouncements with regard to interstate commerce, in the cases to which reference will be made, have of course, equal application to foreign commerce.

(b) The power of the Federal Government for the regulation of interstate and foreign commerce is dominant, and it has long been established that the states of the Union, while retaining certain regulatory authority with respect thereto,

Simpson vs. Shepard, 230 U. S. 352, 396, 57 L. ed. 1511, 1540, 48 L. R. A. (N. S.) 1151,

are powerless to impose a direct burden of any kind thereon.

This is true though, in a given instance or relation, Congress may not have taken affirmative action.

Robbins vs. Shelby Taxing Dist., 120 U. S. 489, 493; 30 L. ed. 694.

First thoroughly considered by Chief Justice Marshall in *Gibbons vs. Ogden*, 9 Wheat. 1, 6 L. ed. 23, these general principles are no longer open to discussion and do not justify more than the bare citation of a few of the more recent cases illustrating their application.

Gloucester Ferry Co. vs. Pennsylvania, 114 U. S. 196, 204, 29 L. ed. 158, 162;

Simpson vs. Shepard, 230 U. S. 352, 399, 57 L. ed. 1511, 1540, 1541;

Pennsylvania vs. West Virginia, 262 U. S. 553, 596, 67 L. ed. 1117, 1132;

Rhode Island vs. Attleboro Steam & E. Co., 273 U. S. 83, 86, 71 L. ed. 549, 552;

Dahnke-Walker Mill Co. vs. Bondurant, 257 U. S. 282, 291, 66 L. ed. 239, 244;

Shafer vs. Farmers Grain Co., 268 U. S. 196, 200, 69 L. ed. 909, 915;

Foster-Fountain Pack. Co. vs. Haydel, 278 U. S. 1, 10, 73 L. ed. 145, 153.

This doctrine is also fortified by the fact that under Art. VI, of the Federal Constitution, that instrument and the laws enacted by Congress thereunder, together with foreign treaties, constitute the Supreme Law of the Land,

> "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

This fundamental is expressly recognized by the declaration of Art. I, Sec. II, of the Constitution of Washington, that

> "The constitution of the United States is the supreme law of the land."

(c) That the properties, which it is the object of this suit to protect from confiscation, are indispensible to the foreign commerce in which appellant is engaged is not open to question. Nor is it longer open to question that the protection afforded by the Commerce Clause, Sec. 8, Art. I, of the Federal Constitution, extends to all instrumentalities of that commerce.

From the recent case of *Foster-Fountain Pack. Co. vs. Haydel*, 278 U. S. 1, 10, 73 L. ed. 147, 153, we quote,

"Interstate commerce includes more than transportation; it embraces all the component parts of commercial intercourse among states. And a state statute that operates directly to burden any of its essential elements is invalid."

The language of Mr. Chief Justice Hughes in *Simpson vs. Shepard* (Minn. rate case), 230 U. S. 352, 398, 57 L. ed. 1511, 1540, is comprehensive.

"There is no room in our scheme of government for the assertion of state power in hostility to the authorized exercise of Federal power. The authority of Congress extends to every part of interstate commerce, *and to every instrumentality or agency by which it is carried on;* * * * This conclusion necessarily results from the supremacy of the national power within its appointed sphere. * * * The grant in the Constitution of its own force, that is, *without action by Congress,* established the essential immunity of interstate commercial intercourse from the direct control of the states with respect to those subjects embraced within the grant which are of such a nature as to demand that, if regulated at all, their regulation should be prescribed by a single authority." (Italics ours.)

With equal emphasis Mr. Justice Field in *Gloucester Ferry Co. vs. Pennsylvania,* 114 U. S. 196, 204, 29 L. ed. 158, declared,

"And it needs no argument to show that the commerce with foreign nations and between the States, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of

regulation. Congress, alone, therefore, can deal with such transportation; *its non-action is a declaration that it shall remain free from burdens imposed by State legislation.*" (Italics ours.)

The following from the recent case of *Dahnke-Walker Mill Co. vs. Bondurant,* 257 U. S. 282, 290, 66 L. ed. 239, 243, is most comprehensive,

> "Such commerce is not confined to transportation from one state to another, but comprehends all commercial intercourse between different states *and all the component parts of that intercourse.* * * * A corporation of one state may go into another, without obtaining leave or license of the latter, for all the legitimate purposes of such commerce; and any statute of the latter state which obstructs or lays a burden on the exercise of this privilege is void under the commerce clause. *Crutcher vs. Kentucky,* 141 U. S. 47, 57, 35 L. ed. 649, 652, 11 Sup. Ct. Rep. 851; *Western U. Teleg. Co. vs. Kansas,* 216 U. S. 1, 27, 54 L. ed. 355, 366, 30 Sup. Ct. Rep. 190; *International Textbook Co. vs. Pigg,* 217 U. S. 91, 112, 54 L. ed. 678, 687, 27 L. R. A. (N. S.) 493, 30 Sup. Ct. Rep. 481, 18 Ann. Cas. 1103; *Sioux Remedy Co. vs. Cope,* 235 U. S. 197, 59 L. ed. 193, 35 Sup. Ct. Rep. 57." (Italics ours.)

To the same effect is the following from *Anderson vs. Shipowners Assn.* 272 U. S. 359, 363, 71 L. ed. 298, 301,

> "But ships and those who operate them are instrumentalities of commerce and within the commerce clause no less than cargoes."

Again, in *Hammer vs. Dagenhart,* 247 U. S. 251, 269, 62 L. ed. 1101, 1105, quoting with approval the language of Chief Justice Marshall in *Gibbons vs. Ogden,* supra, it is said,

> "In other words, the power is one to control the means by which commerce is carried on, which is directly the contrary of the assumed right to forbid commerce from moving and thus destroy it as to particular commodities."

Also,

South Carolina vs. Georgia, 93 U. S. 4, 23 L. ed. 782;

Mondou vs. N. Y. etc. R. Co., 223 U. S. 1, 47-49, 56 L. ed. 327, 345, 346;

Smith vs. Alabama, 124 U. S. 465, 473, 31 L. ed. 508, 510;

DiSanto vs. Pennsylvania etc., 273 U. S. 34, 37, 71 L. ed. 524, 526 (foreign commerce);

Pennsylvania Gas Co. vs. Public Ser. Comm., 252 U. S. 23, 27, 64 L. ed. 434, 441;

Pennsylvania vs. West Virginia, 262 U. S. 553, 596, 67 L. ed. 1117, 1132;

Interstate Commerce Comm. vs. Illinois C. R. Co., 215 U. S. 452, 474, 54 L. ed. 280, 289;

Ozark Pipe Corp. vs. Monier, 266 U. S. 555, 565, 69 L. ed. 439, 443.

(d) Because foreign commerce was thereby burdened, in *Philadelphia etc. Steamship Co. vs. Pennsylvania,* 122 U. S. 326, 30 L. ed. 1200, a Pennsylvania statute, which imposed upon a steamship company, incorporated under the laws of that state, a gross tax upon receipts derived from the transportation of persons and property by sea between different states and to and from foreign countries, was held void.

> "The corporate franchises, the property, the business, the income of corporations created by a state may undoubtedly be taxed by the state; but in imposing such taxes care should be taken not to interfere with or hamper, directly or by indirection, interstate or foreign commerce, or any other matter exclusively within the jurisdiction of the Federal government."

So in *Sault Ste. Marie vs. International Transit Co.* 234 U. S. 333, 338, 58 L. ed. 1337, 1339, a municipal ordinance requiring a license for the operation of a ferry across the St. Mary's River between the State of Michigan and the Province of Ontario, was held to violate the Commerce Clause of the Constitution and void.

Quite analagous are the recent holding that states may not regulate their public highways—instruments

of interstate commerce—in a manner to impose a burden on public carriers engaged in interstate commerce. Thus in *Michigan Public Utilities Commission vs. Duke,* 266 U. S. 570, 69 L. ed. 445, a statute requiring, as a condition to the privilege of using the highways of the state, that persons and corporations engaged in interstate commerce should likewise carry intra-state passengers and merchandise, was held void both as a burden on interstate commerce and as in contravention of the Due Process and Equal Protection Clauses of the 14th Amendment. With respect to the Commerce Clause it is there said,

> "The act would put on plaintiff the duty to use his trucks and other equipment as a common carrier in Michigan, and would prevent him from using them exclusively to perform his contracts. This is to take from him use of instrumentalities by means of which he carries on the interstate commerce in which he is engaged as a private carrier, and so directly to burden and interfere with it. * * * The police power does not extend so far. It must be held that, if applied to plaintiff and his business, the act would violate the commerce clause of the Constitution."

Obviously, therefore, and beyond question it would seem, the easements together with the power lines and substations located thereon, likewise the municipal franchise from the town of Northport which would be rendered valueless if appellees be permitted to

carry out their admitted purpose, are indispensible instruments of foreign commerce and entitled as such to protection from confiscation by the state.

(e) Regardless of the innocent or beneficent purpose for which it may purport to have been adopted or enacted a state constitution or statute must, of course, give way to the authority of the Federal Government if by its operation it necessarily, in a given instance, obstructs interstate or foreign commerce.

In the language of *DiSanto vs. Pennsylvania,* 273 U. S. 34, 37, 71 L. ed. 524, 526,

> "A state statute which by its necessary operation directly interferes with or burdens foreign commerce is a prohibited regulation and invalid, regardless of the purpose with which it was passed. * * * The Congress has complete and paramount authority to regulate foreign commerce and, by appropriate measures, to protect the public against the frauds of those who sell these tickets and orders."

To the same effect, from *Foster-Fountain Pack. Co. vs. Haydel,* 278 U. S. 1, 10, 73 L. ed. 147, 153,

> "One challenging the validity of a state enactment on the ground that it is repugnant to the commerce clause is not necessarily bound by the legislative declarations of purpose. It is open to him to show that in their practical operation its provisions directly burden or destroy interstate commerce."

Also,

Public Utilities Commission vs. Attleboro Steam & E. Co., 273 U. S. 83, 89, 71 L. ed. 549, 553.

(f) It should probably be noted in passing that the police power of the state cannot be asserted as a justification for the confiscation or undue burdening of foreign or interstate commerce. Thus in *Lenke vs. Farmers Grain Co.*, 258 U. S. 50, 59, 66 L. ed. 458, 464, it is said,

> "This principle (the police power) has no application where the state passes beyond the exercise of its legitimate authority and undertakes to regulate interstate commerce by imposing burdens upon it. This court stated the principle and its limitations in the discussion of the subject in the Minnesota Rate Cases (Simpson vs. Shepard) 230 U. S. 352, 57 L. ed. 1511."

To the same effect,

Myer vs. Nebraska, 262 U. S. 390, 400, 67 L. ed. 1042, 1045.

(g) Should it be contended, which is anticipated, that the general doctrine, affirmed in *Terrace vs. Thompson*, 263 U. S. 197, 217, 68 L. ed. 255, 275, and *Webb vs. O'Brien*, 263 U. S. 313, 322, 68 L. ed. 318, 321, that the state, in the absence of a treaty to the contrary, may deny to aliens the right to own land

within its borders, precludes assertion in the instant situation of the power of the Federal Government, it would be a sufficient answer that this doctrine must be applied with due regard for the constitutional rights of the individual, citizen and alien alike, and has no application at all as against the power and authority of the Federal Government for the protection of foreign commerce.

While the statement in *Terrace vs. Thompson* and *Webb vs. O'Brien*, supra, recognizes that the rule is inapplicable in the face of a treaty to the contrary, we respectfully submit that it is equally inapplicable in the face of a power expressly granted to the Federal Government. Article VI of the Federal Constitution declares that instrument, together with treaties and the laws of the United States made and enacted thereunder, to be alike the Supreme Law of the Land,

> "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Obviously, therefore, it cannot, with an semblance of reason, be contended that a treaty is more potent and far reaching in its effect than the constitution itself by virtue of which treaties are negotiated.

Since the power of the Federal Government for the regulation of interstate and foreign commerce is un-

qualified, full and complete, and extends to all instrumentalities of such commerce, the elementary rule that by implication it has power to do all things reasonably necessary for the exercise of the power expressly granted is called to action.

Marshall vs. Gordon, 243 U. S. 531, 537, 61 L. ed. 881, 885;

Cherokee Nation vs. Kansas Ry. Co., 135 U. S. 641, 656, 34 L. ed. 295;

South Carolina vs. United States, 199 U. S. 437, 451, 50 L. ed. 261, 265;

Lewis Pub. Co. vs. Morgan, 229 U. S. 288, 314, 57 L. ed. 1190, 1203;

Dillon vs. Gloss, 256 U. S. 368, 373, 65 L. ed. 994, 996.

In the first case supra, *Marshall vs. Gordon,* it is said,

> "The rule of constitutional interpretation announced in *McCulloch vs. Maryland,* 4 Wheat, 316, 4 L. ed. 579, that that which was reasonably appropriate and relevant to the exercise of a granted power was to be considered as accompanying the grant, has been so universally applied that it suffices merely to state it."

In the second case, *Cherokee Nation vs. Kansas Ry. Co.,* concerning the right of a railroad company to

condemn land for a right-of-way, pursuant to an act of Congress, closely related in principle to the question here at issue, it is said,

> "Such an authority, as was said in *Kohl vs. United States,* 91 U. S. 367, is essential to the independent existence and perpetuity of the United States, and is not dependent upon the consent of the States. *United States vs. Fox,* 94 U. S. 315, 320; *United States vs. Jones;* 109 U. S. 513; *United States vs. Great Falls Manufacturing Co.,* 112 U. S. 645; *Van Brocklin vs. State of Tennessee,* 117 U. S. 151, 154. As was said by Mr. Justice Bradley in *Stockton vs. Baltimore etc. Railroad,* 35 Fed. Rep. 9, 19: 'The argument based upon the doctrine that the States have the eminent domain or highest dominion in the lands comprised within her limits, and that the United States have no dominion in such lands, cannot avail to frustrate the supremacy given by the Constitution to the government of the United States in all matters within the scope of its sovereignty. This is not a matter of words, but of things. If it is necessary that the United States government should have an eminent domain still higher than that of the State, in order that it may fully carry out the objects and purposes of the Constitution, then it has it. Whatever may be the necessities or conclusions of theoretical law as to eminent domain or anything else, it must be received as a postulate of the Constitution that the government of the United States is invested with full and complete power to execute and carry out its purposes."

Clearly, the general authority of the State cannot be allowed to prevail against the necessities of foreign commerce.

VII
TREATY RIGHTS

Should the court, rejecting the arguments urged against Sec. 33, Article II of the State Constitution, conclude that appellant, with relation to the matters at issue, is to be considered an alien, by reason of the alien ownership of the majority of its capital stock, and incapable of owning land or retaining the easements here in question, then it is respectfully suggested that it is entitled, for itself and the commerce in which it is engaged, to protection under the 1815 Treaty between the United States and Great Britain, 1 Malloy's Compilation, 624, as extended by the Treaty of 1827, 1 Malloy's Compilation, 645.

The preamble of that treaty provides,

> "The United States of America and His Britannick Majesty being desirous, by a convention, to regulate the commerce and navigation between their respective countries, territories and people, in such a manner as to render the same reciprocally beneficial and satisfactory, have respectively named Plenipotentiaries, and given them full powers to treat of and conclude such convention, that is to say:"

The second sentence of Article I further provides,

> "The inhabitants of the two countries, respectively, shall have liberty freely and securely to come with their ships and cargoes to all such places, ports and rivers, in the territories afore-

> said, to which other foreigners are permitted to come, to enter into the same, and to remain and reside in any parts of the said territories, respectively; also to hire and occupy houses and warehouses for the purposes of their commerce; and, generally, the merchants and traders of each nation respectively shall enjoy the most complete protection and security for their commerce, but subject always to the laws and statutes of the two countries, respectively."

It should probably be noted, in this connection, that by the concluding paragraph of Art. II of the Treaty, it is provided that Canada and the West Indies

> "shall not be affected by any provision of this article."

Clearly, therefore, by all accepted rules of interpretation, with respect to every part thereof, other than Art. II, not here material, the Dominion of Canada is affected by and comes in the fullest sense within the scope and under the influence of the treaty. Being entitled, therefore, not only "to hire and occupy houses and warehouses for the purposes of their (its) commerce" but to enjoy generally "the most complete protection and security for their (its) commerce," it is confidently submitted that, within the spirit and purpose of the treaty, appellant is entitled to enjoy protection and security in its occupancy and use of the necessary instruments of foreign commerce, here threatened by the state with confiscation.

The Supreme Court of Washington, *In re Stixrud's Estate,* 58 Wash. 339, 343, 109 Pac. 343, 345, definitely recognized the supremacy of an international treaty in the matter of property ownership in the State of Washington. It is there said,

> "It is equally well settled that the matter of removing the disability of aliens, in order that they may have the same rights as citizens to acquire and hold property in the states of the Union, is a proper subject of treaty regulation."

That the treaty should be liberally construed, so as to effect the obvious purpose between friendly nations for which it was negotiated, is firmly established.

Ohio ex rel Clarke vs. Deckenbach, 274 U. S. 392, 71 L. ed. 1115;

Jordan vs. Tashiro, 278 U. S. 123, 130, 73 L. ed. 214, 220.

Respectfully submitted,

W. LON JOHNSON,
Colville, Wash.,

and

O. C. MOORE,
Spokane, Wash.,
Attorneys for Appellant,

APPENDIX I

CHAPTER 50
(H. B. 79)

ALIENS

AN ACT relating to the rights and disabilities of aliens with respect to lands; providing for forfeitures in certain cases, prescribing penalties, and repealing sections 135 and 136 Pierce's Code, 8775 and 8776 of Remington and Ballinger's Annotated Codes and Statutes of Washington.

Be it enacted by the Legislature of the State of Washington:

Section 1. In this act, unless the context otherwise requires,

(a) "Alien" does not include an alien who has in good faith declared his intention to become a citizen of the United States, but does include all other aliens and all corporations and other organized groups of persons a majority of whose capital stock is owned or controlled by aliens or a majority of whose members are aliens;

(b) "Land" does not include lands containing valuable deposits of minerals, metals, iron, coal or fire clay or the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom, but does include every

other kind of land and every interest therein and right to the control, possession, use, enjoyment, rents, issues or profits thereof except a mortgage and except a right to the possession, use or enjoyment of land for a period of not more than ten years for a purpose for which an alien is accorded the use of land by a treaty between the United States and the country whereof he is a citizen;

(c) "Land" also includes any share or interest in a corporation or other organized group of persons deemed an alien in this act which has title to land either heretofore or hereafter acquired;

(d) To "own" means to have the legal or equitable title to or the right to any benefit of;

(e) "Title" includes every kind of legal or equitable title;

(f) Ownership of or title to land acquired by inheritance or in good faith either under mortgage or in the ordinary course of justice in the collection of debts, or acquired by a female citizen afterwards expatriated by marriage to an alien, is excluded;

(g) "Inheritance includes devise;

(h) "Mortgage" includes every kind of lien upon land;

(i) A mortgage of land under which an alien is entitled before default to any control, possession, use or enjoyment of the land, is an absolute conveyance; and

(j) "Person" includes an individual, partnership, corporation or any other organized group of persons.

Sec. 2. An alien shall not own land or take or hold title thereto. No person shall take or hold land or title to land for an alien. Land now held by or for aliens in violation of the constitution of the state is forfeited to and declared to be the property of the state. Land hereafter conveyed to or for the use of aliens in violation of the constitution or of this act shall thereby be forfeited to and become the property of the state.

Sec. 3. An alien is not qualified to be trustee under a will, executor, administrator or guardian, if any part of the estate is land: *Provided,* An alien now lawfully acting in any such capacity may continue for not more than two years.

Sec. 4. If hereafter an alien acquire land by inheritance or in good faith either under mortgage or in the ordinary course of justice in the collection of debts and, remaining an alien, hold the same for more than twelve years from the date title was so ac-

quired or control or possession taken, the land shall be forfeited to the state.

Sec. 5. If an alien, claiming or holding under a mortgage, has control, possession, use or enjoyment of the mortgaged land, the obligation secured by the mortgage shall be deemed matured and the mortgage shall be foreclosed; and if the land be not sold under foreclosure within three years after the alien has obtained control, possession, use or enjoyment, the mortgage and the obligation thereby secured shall be forfeited to the state and shall be foreclosed for the use of the state.

Sec. 6. Unless an alien who has declared his intention to become a citizen of the United States be admitted to citizenship within seven years after his declaration was made, it shall be presumed that he declared his intention in bad faith.

Sec. 7. Whoever

(a) Knowingly transfers or conveys land or title to land to an alien; or

(b) Knowingly takes land or title to land in trust for an alien; or

(c) Holding in trust for an alien land or title to land, either heretofore or hereafter acquired, fails for

thirty days after acquiring knowledge or notice that he holds in trust for an alien to disclose the fact to the attorney general or the prosecuting attorney of the county where the land is situated; or

(d) Being an alien and having title to land or control, possession, use or enjoyment of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the nature and extent of his interest in and title to the land; or

(e) Being an officer or agent of a corporation or other organized group of persons which has title to land or control, possession, use or enjoyment of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the nature and extent of the interest of persons not citizens of the United States in the corporation or other organized group of persons; or

(f) Being an officer or agent of a corporation or other organized group of persons which holds in trust for an alien title to land or control or possession of land, whether heretofore or hereafter acquired, refuses to disclose to the attorney general or the prosecuting attorney of the county where the land is situated the

nature and extent of the alien's interest in and title to the land; or

(g) Wilfully counsels, aids or abets another in violating or evading this act,

Is guilty of a gross misdemeanor.

Sec. 8. It shall be the duty of the attorney general and of the prosecuting attorneys of the several counties to enforce this act, and of the attorney general to direct and control its enforcement.

Sec. 9. Property forfeited to the state by this act shall inure to the permanent common school fund and be managed and disposed of accordingly.

Sec. 10. This act shall not impair any title or right heretofore or hereafter acquired from or derived through and alien in good faith and for value by a person not under an alien's disability.

Sec. 11. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not effect the validity of the act as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

Sec. 12. Sections 135 and 136 Pierce's Code, 8775 and 8776 of Remington and Ballinger's Annotated

Codes and Statutes of Washington are hereby repealed.

Passed the House February 25, 1921.

Passed the Senate March 2, 1921.

Approved by the Governor March 8, 1921.

APPENDIX II

SECTION 3852, REMINGTON'S COMPILED STATUTES OF WASHINGTON

Any corporation incorporated under the laws of any state or territory in the United States, or of any foreign country, state, or colony, for any of the purposes for which domestic corporations are authorized to be formed under the laws of this state, shall have full power and is hereby authorized to sue and to be sued in any court having competent jurisdiction, to acquire, purchase, hold, mortgage, sell, convey, or otherwise dispose of, in the corporate name, all real estate or personal property necessary or convenient to carry into effect the objects and purposes of its corporation, and also any interest in real estate, by mortgage or otherwise do (due) to or loans made by such foreign corporations within the boundaries of this state, either prior to or after the passage of this

act, and generally do and perform every act and transact every kind of business within this state in the same manner and to the same extent as corporations incorporated and organized under the laws of this state are authorized to do under the laws of this state, by a compliance with all the conditions prescribed by the next two succeeding sections of this chapter: Provided, however, that this chapter shall not be (so) construed as to allow such foreign corporation to transact business within the state on more favorable conditions than are prescribed by law for a similar corporation organized under the laws of this state: And provided further, that no corporation, the majority of the capital stock of which is owned by aliens other than those who in good faith have declared their intention to become citizens of the United States, shall acquire the ownership of any lands in this state other than lands containing valuable deposits of minerals, metals, iron, coal, or fireclay, and the necessary land for mills and machinery to be used in the development thereof, and the manufacture of the products therefrom, except where acquired under mortgage, or in good faith in the ordinary course of justice in the collection of debts: Provided, further, that no foreign corporation which is hereafter organized which has among its other powers the busi-

ness of dealing in real estate, and buying and selling the same, and for the purpose of carrying on a real estate brokerage business, shall be permitted to transact such business of buying and selling and dealing in real estate, and carrying on a brokerage business therein in this state; but this prohibition shall not extend to any other business for the transaction of which such corporation may be organized.